

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #2	CCRB Case #: 201904750	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/15/2019 4:10 PM	Location of Incident: East 116th Street and Madison Avenue	Precinct: 25	18 Mo. SOL 7/15/2020	EO SOL 3/1/2021	
Date/Time CV Reported Fri, 05/31/2019 3:59 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 05/31/2019 3:59 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Laborde	05867	954037	023 PCT
2. POM Sheldon Elliott	21027	958550	023 PCT
3. SGT Jonathan Hom	4803	940269	023 PCT
4. An officer			023 PCT
5. Officers			023 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT1 William Dunn	06684	901496	023 DET

Officer(s)	Allegation	Investigator Recommendation
A.SGT Jonathan Hom	Abuse: Sergeant Jonathan Hom stopped § 87(2)(b)	
B.POM Michael Laborde	Force: Police Officer Michael Laborde used physical force against § 87(2)(b)	
C. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
D. Officers	Force: Officers used physical force against § 87(2)(b)	
E.SGT Jonathan Hom	Abuse: Sergeant Jonathan Hom frisked § 87(2)(b)	
F.SGT Jonathan Hom	Abuse: Sergeant Jonathan Hom searched § 87(2)(b)	
G.SGT Jonathan Hom	Abuse: Sergeant Jonathan Hom arrested § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

## Case Summary

On May 31, 2019, § 87(2)(b) filed the following complaint via the CCRB's website (Board Review 01).

On January 15, 2019, at approximately 4:10 PM, while walking in the vicinity of East 116th Street and Park Avenue in Manhattan, § 87(2)(b) became aware that he was being followed by an unmarked vehicle carrying three individuals, identified as Sergeant Jonathan Hom, Police Officer Michael Laborde, and Police Officer Sheldon Elliott of the 23rd Precinct. Sergeant Hom and Police Officer Laborde exited the unmarked car and ran towards him. § 87(2)(b) immediately fled and was chased by the officers (**Allegation A: Abuse of Authority – Stop**, § 87(2)(g)). As he reached the corner of East 116th Street and Park Avenue, § 87(2)(b) was forcibly taken down to the ground by Police Officer Laborde (**Allegation B: Physical Force**, § 87(2)(g)). Sergeant Hom and Police Officer Laborde then handcuffed § 87(2)(b) with the assistance of other responding officers, at which time an unidentified officer allegedly told him to “shut the fuck up” (**Allegation C: Discourtesy – Word**, § 87(2)(g)). Upon handcuffing him, officers pulled on § 87(2)(b)'s elbows in a forceful manner that allegedly dislocated his right shoulder (**Allegation D: Physical Force**, § 87(2)(g)). Under Sergeant Hom's observation, Police Officer Laborde and the responding officers proceeded to frisk and search § 87(2)(b)'s person (**Allegation E: Abuse of Authority – Frisk**, § 87(2)(g), **Allegation F: Abuse of Authority – Search**, § 87(2)(g)), which yielded no firearms. Sergeant Hom directed that § 87(2)(b) be transported to the 23rd Precinct stationhouse (**Allegation G: Abuse of Authority – Arrest**, § 87(2)(g)). After being lodged in a cell for several hours, § 87(2)(b) was ultimately interviewed by Detective William Dunn of the 23rd Precinct's Detective Squad, who advised § 87(2)(b) that he had been misidentified as a wanted suspect. Shortly thereafter, § 87(2)(b) was released from police custody without being charged or summonsed with any offenses. § 87(4-b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

The investigation obtained BWC video footage from the cameras of 15 officers who responded to the scene of § 87(2)(b)'s apprehension, including from Police Officer Laborde and Police Officer Elliott (Board Review 21-35). Sergeant Hom was not equipped with a BWC on the date of the incident because it was undergoing repairs.

## Findings and Recommendations

### Allegation (A) Abuse of Authority: Sergeant Jonathan Hom stopped § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on June 18, 2019 (Board Review 02). Sergeant Hom was interviewed on October 1, 2019 (Board Review 05). Police Officer Laborde was interviewed on October 10, 2019 (Board Review 06). Police Officer Elliott was interviewed on October 23, 2019 (Board Review 07). Detective Dunn was interviewed on October 29, 2019 (Board Review 08).

The following principal facts are undisputed. On January 15, 2019, at approximately 4:00 PM, multiple 911 callers reported a shooting outside at a school yard at East 111th Street and Park Avenue (see location map at Board Review 04, 911 audio at Board Review 14-19). Police dispatchers relayed the incident via radio to all units in the area, communicating in substance that that the shooting stemmed from an altercation between two groups of young males, and that the involved parties – including the sole shooter – had all fled the scene. Additionally, based on the

information provided by the callers, the suspects' physical descriptions were accurately relayed to officers. Immediately upon receiving these transmissions, Sergeant Hom began canvassing the surrounding blocks in a vehicle with Police Officer Laborde and Police Officer Elliott, at which time § 87(2)(b) walked by on the sidewalk. Believing that § 87(2)(b) matched one of the radioed descriptions, Sergeant Hom and his officers briefly followed § 87(2)(b) in their vehicle. To investigate further, Sergeant Hom soon exited the vehicle and ordered § 87(2)(b) to stop. Either because § 87(2)(b) failed to stop or because § 87(2)(b) fled in response to Sergeant Hom's command, a foot pursuit then ensued. § 87(2)(b) ran until he was forcibly taken down by Police Officer Laborde at East 116th Street and Park Avenue. While no weapons were found on him, § 87(2)(b) was quickly removed to the 23rd Precinct stationhouse at Sergeant Hom's direction, where he was lodged in a cell for several hours. After an interview with Detective Dunn, § 87(2)(b) was ultimately released from custody by Police Officer Laborde at about 10:15 PM (Board Review 10). § 87(2)(b)'s processed arrest paperwork, charging him with § 87(2)(b), § 87(2)(a) 160.50, was voided by Police Officer Laborde just before his release.

§ 87(2)(b) stated that he exited the 6-train subway at East 110th Street and Lexington Avenue at approximately 4:00 PM and began walking north on Lexington Avenue towards an office appointment at East 116th Street. § 87(2)(b) as wearing black jeans, black shoes, and an olive-green Canadian Goose brand winter jacket with a fur-lined hood, with a cell phone and keys in one of his pockets. Additionally, he had music playing at a loud volume through the headphones in his ears. § 87(2)(b) did not know why he was being followed by the unmarked car and, since he was not certain if it was in fact a police vehicle, grew fearful for his safety. Sergeant Hom exited the vehicle and might have waved at him, as if he was asking him to come back. However, because his music was still playing, § 87(2)(b) did not know if Sergeant Hom said anything, and thus continued to walk without responding to the hail. When he glanced back again, § 87(2)(b) saw Police Officer Laborde exit the vehicle as well and join Sergeant Hom, at which time both officers started running toward § 87(2)(b). Because he generally feared the police and because he did not know if they were in fact officers, § 87(2)(b) reacted by fleeing down East 116th Street. As he ran, § 87(2)(b) did not hear any commands from the officers. But just as he was about to reach East 116th Street and Park Avenue, § 87(2)(b) was grabbed from behind and taken down to the ground. Police Officer Laborde and multiple other responding officers then handcuffed, frisked, and searched him.

Sergeant Hom stated that while on routine Anti-Crime patrol with Police Officer Laborde and Police Officer Elliott, the officers were radioed about multiple 911 calls reporting a shooting at East 111th Street and Park Avenue. The dispatcher went on to relay that the shooter was described as a tall black male, possibly an "older teenager," wearing a dark-colored "bubble jacket" and a "grey hoodie," and heading north on Park Avenue from East 111th Street to East 112th Street. Sergeant Hom did not recall if the shooter's height or build was specified and recalled nothing else about the information relayed. Since the officers were already driving in the vicinity of the location – with Police Officer Elliott operating, Police Officer Laborde in the front, and Sergeant Hom in the rear – they promptly began canvassing the area in their vehicle to look out for anyone matching the relayed description.

As they travelled down Lexington Avenue and came to a stop at East 112th Street, Sergeant Hom suddenly noticed an individual matching the reported description – a black male walking eastbound on East 112th Street, coming from the direction of Park Avenue. When the male, identified as § 87(2)(b), passed by the vehicle, Sergeant Hom observed that he was wearing a puffy winter jacket over a grey hoodie, with the hood over his head. Additionally, Sergeant Hom observed the following regarding § 87(2)(b)'s movements: 1.) he was walking with his torso in an unusual "bladed" (or angled) stance; 2.) he was holding onto his waistband; and 3.) he kept glancing over his shoulder to look towards Park Avenue, where police activity was visible. When asked if there

were other pedestrians walking with, nearby, or in his general proximity, Sergeant Hom stated that the male “was the only person that stood out to me walking from Park Avenue.” When asked if he saw anything to indicate that § 87(2)(b) had any concealed weapons on him, under clothing, Sergeant Hom stated: “I couldn’t see because his body was turned, bladed away, in a manner as if he was trying to hide it...guns are small.” Asked if he saw any indication of a concealed weapon on § 87(2)(b)’s person, Sergeant Hom stated that § 87(2)(b)’s bladed stance made him concerned that he might be carrying the reported gun. Police Officer Laborde and Police Officer Elliott had also observed the individual, either on their own or after Sergeant Hom pointed him out.

Upon spotting § 87(2)(b) who turned north onto Lexington Avenue, the officers proceeded to Park Avenue and headed north as well, intending to intercept § 87(2)(b) in the manner. But upon reaching East 116th Street, Sergeant Hom saw § 87(2)(b) at the intersection, waiting to cross to the other side of Park Avenue. § 87(2)(b)’s body language remained the same – torso bladed and glancing over his shoulder, he was still holding onto his waistband. At this point, Sergeant Hom decided to stop § 87(2)(b) to investigate. Exiting the vehicle alone, Sergeant Hom approached § 87(2)(b) and asked him to “please stop.” § 87(2)(b) however, immediately fled by running through all four lanes of Park Avenue in the middle of oncoming traffic. Sergeant Hom pursued § 87(2)(b) on foot with Police Officer Laborde at his side. § 87(2)(b) continued to hold onto his waistband as he ran. Police Officer Laborde was soon able to catch up with § 87(2)(b) and take him down at East 116th Street and Park Avenue.

Police Officer Laborde initially stated that he did not recall what descriptions of the shooter, if any, were provided. He subsequently said that the dispatcher may have relayed that the shooter was a black male wearing a green jacket. However, Police Officer Laborde did not recall if a jacket type was specified, or if the suspect’s clothing was further described. Police Officer Laborde stated that no other descriptor – such as the shooter’s height, build, or age – were provided and he did not recall whether a direction of travel given.

When Sergeant Hom first pointed out § 87(2)(b) Police Officer Laborde saw him as a black male wearing a dark colored jacket, walking very quickly and “looking around as if he was trying to get away from a situation.” Police Officer Laborde did not recall whether or to what extent § 87(2)(b) resembled the description of the shooter. While he saw that § 87(2)(b) was walking with one hand tucked under his jacket around his waistband, he did not observe anything about his clothing – such as bulges or outlines – suggestive of a concealed weapon. Police Officer Laborde acknowledged that someone merely holding onto their waistband was innocuous, but stated that § 87(2)(b)’s doing so, in combination with him coming from the shooting location and glancing around nervously, made his waistband motions suspicious.

Like Sergeant Hom, Police Officer Laborde also stated that § 87(2)(b) fled when Sergeant Hom called out to him, and that he was still holding onto his waistband at the time. Police Officer Laborde and Police Officer Elliott remained in the vehicle to make their way to East 116th Street and Madison Avenue, where Police Officer Laborde exited and joined Sergeant Hom in the chase.

Police Officer Elliott recalled nothing about what was initially radioed about the suspect’s description or direction of flight. When Sergeant Hom pointed out § 87(2)(b) on the sidewalk, Police Officer Elliott believed that § 87(2)(b) had also noticed them. However, Police Officer Elliott saw nothing else that was suspicious about § 87(2)(b). As § 87(2)(b) headed north, Police Officer Elliott quickly U-turned onto the north side of East 116th Street, where Sergeant Hom and Police Officer Laborde exited and left him with the vehicle. As Sergeant Hom and Police Officer Laborde approached him from behind, § 87(2)(b) somehow became aware of their approach and immediately fled, running through traffic to the other side of the street. As Sergeant Hom and

Police Officer Laborde pursued § 87(2)(b) on foot, Police Officer Elliott drove around the block and attempted to intercept him from another direction. However, when Police Officer Elliott reached East 116th Street and Park Avenue, § 87(2)(b) was already in custody.

Sergeant Hom's memo book entry for the incident is consistent with his statement, noting that § 87(2)(b) "took off running from location grasping waistband" (Board Review 09). Police Officer Laborde and Police Officer Elliott similarly noted the foot pursuit in their memo books, but did not refer to § 87(2)(b)'s waistband (Board Review 10-11).

The time period in question – from Sergeant Hom's first sighting § 87(2)(b) to the ensuing flight to the eventual apprehension – was not captured on the involved officers' BWCs. However, Police Officer Laborde, Police Officer Elliott, and the numerous responding units, all activated their BWCs to capture the time-frame after § 87(2)(b)'s apprehension. From different perspectives, the recordings show § 87(2)(b) on the ground being handcuffed, frisked, and searched. The footage also shows that at the time of the incident, § 87(2)(b) was wearing: an olive-green colored winter jacket; a fur-lined hood affixed to it; a black shirt under the jacket; and black pants (see still BWC frames at Board Review 03). He does not appear to be wearing any additional articles of clothing, such as a grey hoodie or "bubble" jacket. As reflected on his driver's license (Board Review 03), § 87(2)(b) is a § 87(2)(b)-old black male who stands 5'9" tall and weighs 150 pounds.

The CCRB reviewed the NYPD's EVENT documentation of the incident, logged under job numbers § 87(2)(b), § 87(2)(b), and § 87(2)(b) (Board Review 14). Also reviewed were the audio recordings of the pertinent 911 calls (Board Review 15-17), and the associated police radio communications (Board Review 18). The event chronology and the 911 audio show the following: At 4:03 PM, the first 911 caller (hereafter referred to as Caller 1) identifying herself by name and phone number, reports a single gunshot fired at East 111th Street and Park Avenue, possibly involving two groups of six to eight feuding "boys" (Board Review 14, 15). Caller 1 states that all of the males – including the sole shooter – immediately fled the scene, running on Park Avenue towards East 112th Street. While Caller 1 describes the males collectively as wearing "bubble coats, jeans, and sneakers," she is not able to provide any further specifics or individualized details. Simultaneously, an identified second 911 caller (hereafter referred to as Caller 2) reports the shooting at the same location. Caller 2 describes the shooter as a black male wearing a "grey hoodie" over his head and a "coat," the color of which he did not know. At 4:06 PM, an identified third 911 caller (hereafter referred to as Caller 3) reports the shooting greater detail, stating: that it just occurred on a school yard at the location; that two groups of teenagers appeared to be involved; and that the sole shooter fled the scene with a small silver firearm towards the "train tracks" on East 110th Street (Board Review 14, 17). Caller 3 describes the shooter as a "young" black male, about 5'7" tall, with a "thin" build, wearing a "black jacket," a "hoodie," and "grey pants." Crucially, it should be noted here that although Caller 3's report was received at 4:06 PM, the record shows that the dispatcher only relayed the information – the most specific of the 911 calls – at 4:11 PM, after (as delineated below) Sergeant Hom initiated the foot pursuit.

The police radio communications between 4:04 PM and 4:17 PM show that the first two 911 callers' information were broadcast to all units immediately as each report came in (Board Review 18). Radio noise distortion makes it difficult to discern exactly how the multiple communicating units received or responded to this information. However, the following transmissions stand out clearly. At about 4:04 PM (1 minute and 30 seconds into the audio recording), the dispatcher relays Caller 1's report – that six to eight males wearing bubble jackets fled toward East 112th Street. At about 4:06 PM (2 minutes and 40 seconds into the audio recording), the dispatcher relays Caller 2's description of the shooter as wearing a coat and grey hoodie. At approximately 4:09 PM, 4 minutes and 18 seconds into the audio recording, an unidentified PSA5 Lieutenant announces, "Five male

blacks, one wearing brown jacket, running eastbound on 112<sup>th</sup>.” About a minute later, at 4:10 PM, the same unidentified Lieutenant repeats that the suspect is 5’7” tall, with a thin build, wearing a black jacket and grey hoodie.” The dispatcher repeats the above message verbatim.

Immediately thereafter, at 4 minutes and 58 seconds into the recording, the dispatcher relays that “another caller” – referring to Caller 3’s 4:06 PM report as noted earlier – has advised that “perps ran toward 110th toward the train tracks, perp seen with small silver revolver...” However, the dispatcher is then cut off, at 5 minutes and 8 seconds in the recording, by someone identifying as “23rd Precinct Sergeant.” After a string of initially unintelligible messages, at 5 minutes and 12 seconds in the recording, an individual identifying as “23 Crime Sergeant” – presumably, Sergeant Hom – states, “[inaudible] black pants, going west bound on 115th Street toward Madison.” The dispatcher then relays Sergeant Hom’s message at least twice over the next minute. After several unintelligible exchanges between Sergeant Hom and the dispatcher, an unidentified female at 6 minutes and 45 seconds into the recording announces “no further” units at “75 East 116th,” the exact location of § 87(2)(b)’s apprehension. An unidentified officer at 7 minutes and 25 seconds into the recording relays, without further context, that an eyewitness saw the shooter running “eastbound on 112th” with a second male named as § 87(2)(b).” Between 8 minutes and 14 seconds and 8 minutes and 52 seconds into the recording, unidentified officers – over heavy noise distortion, without elaboration – continue to repeat that the shooter is fleeing with someone named “Raul Ayala.” Then at 9 minutes and 24 seconds into the recording, Sergeant Hom again identifies himself as “23 Crime Sergeant” and states, “One male black back to the 23 in regards to 116.” At 10 minutes and 27 seconds in the recording, or 4:17 PM, Sergeant Hom states, “Be advised – we have one under in front of 75 East 116<sup>th</sup> Street, no shots fired, all units accounted for.” § 87(2)(b) is not referenced again for the remainder of the recording.

An officer has the common-law right of inquiry to approach and question an individual, without detaining them, when they have a founded suspicion that “criminality is afoot.” People v De Bour, 40 NY2d 210 [1976] (Board Review 39). This “level two” inquiry can involve “extended and accusatory” questioning that “focuses on the possible criminality of the person approached.” However, the inquiry must be predicated on specific and articulable facts. New York v. Hollman, 79 N.Y.2d 181 [1992] (Board Review 40).

To stop an individual, an officer must have a reasonable suspicion that they have either committed, are presently committing, or about to commit a crime. Reasonable suspicion requires “individualized” and “concrete observations” regarding a subject’s criminal conduct, or factual knowledge of circumstances indicating their involvement in criminal activity. Information “couched in vague and general terms” will not suffice. Furthermore, innocuous or “even equivocal behavior” alone can generate neither founded nor reasonable suspicion. People v. De Bour (Board Review 39).

An officer cannot pursue, stop, or detain an individual solely because they match a vague description of a wanted suspect. Generic and unspecific descriptions common to numerous persons – lacking particularized details, such a suspect’s height, weight, clothing color, or direction of travel – cannot give rise to reasonable suspicion.<sup>1</sup> People v Beckett, 88 AD3d 898 [2d Dept 2011] (Board

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<sup>1</sup> For example, the vague description of a “black male with a blue coat carrying a brown paper bag on a busy street in Harlem during the morning hours, when many people may be going to work or purchasing goods, is hardly unique.” People v Bond, 116 AD2d 28 [1st Dept 1986] (Board Review 42). Similarly, the unspecific description of a “black male wearing a black jacket,” in a “densely populated area of Harlem in the early evening” matches “many people who could have fit the vague description...” People v Bilal, 170 AD3d 83 [1st Dept 2019] (Board Review 43).

Review 41).

To elevate founded suspicion to reasonable suspicion, the police “must obtain additional information or make additional observations of suspicious conduct” sufficiently indicative of criminal behavior.” People v Moore, 6 NY3d 496 [2006] (Board Review 44).

“Flight alone... or even in conjunction with equivocal circumstances that might justify a police request for information is insufficient to justify pursuit...” People v Holmes, 81 NY2d 1056 [1993] (Board Review 45). In this regard, the Appellate Division’s Second Department has ruled that flight plus equivocal behavior will not justify police pursuit *even when* a suspect flees: after tensing his arm “beneath his coat...around the vicinity of his waistband” (People v Carmichael, 92 AD3d 687 [2d Dept 2012] (Board Review 46); after “grabbing his waistband area around a possible bulge (People v Haynes, 115 AD3d 676 [2d Dept 2014] (Board Review 47); or after “holding his waistband” while looking around nervously. People v Cadle, 71 AD3d 689 [2d Dept 2010] (Board Review 48).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Allegation (B) Force: Police Officer Michael Laborde used physical force against § 87(2)(b)**

**Allegation (C) Discourtesy: An officer spoke discourteously to § 87(2)(b)**

**Allegation (D) Force: Officers used physical force against § 87(2)(b)**

§ 87(2)(b) stated that he was handcuffed by Sergeant Hom and Police Officer Laborde within 15 seconds of his takedown, at which time upwards of 20 responding officers arrived at the scene. When § 87(2)(b) asked one of these officers why he was being arrested, the officer told him to, “Shut the fuck up.” Officers then grabbed his elbows and pulled them upwards in a manner that caused him severe pain in his right shoulder. Once at the stationhouse, § 87(2)(b) requested medical attention for the pain. However, when Emergency Medical Technicians (EMTs) responded, he ultimately refused medical attention. § 87(2)(b) stated that he sought treatment at § 87(2)(b)’s Emergency Room soon after being released. § 87(2)(b) was informed that his right rotator cuff was “dislocated,” but he did not recall if he was X-rayed and was discharged with only an icepack. § 87(2)(b) attributed the injury to the officers’ actions during handcuffing.

Police Officer Laborde acknowledged that he chased § 87(2)(b) until he was able to grab him from behind, causing them both to fall to the ground together. He denied intentionally tackling § 87(2)(b) and did not recall who then handcuffed him.

Sergeant Hom stated that he, Police Officer Laborde, and Police Officer Elliott took § 87(2)(b) down to the ground to arrest him. Actively resisting, § 87(2)(b) kept reaching for his waistband. The three officers though managed to handcuff him quickly without further incident.

Police Officer Elliott stated that he made no physical contact with § 87(2)(b) as he arrived in the vehicle as he was being handcuffed. Besides the take-down, Sergeant Hom, Police Officer Laborde, and Police Officer Elliott denied using any additional force on § 87(2)(b) with respect to his shoulders otherwise. The officers all denied telling § 87(2)(b) to “Shut the fuck up,” or hearing anyone else do so.

Police Officer Laborde prepared a TRI report (§ 87(2)(b)) reflecting his use of force on § 87(2)(b) and his injuries sustained as a result (Board Review 12). The TRI documents that a forcible takedown was conducted. The reason specified is “fleeing suspect” and “defense of self.” Narrative sections note that § 87(2)(b) “actively resisted by flailing hands and tensing arms when Police Officer Laborde tried place him under control,” and that § 87(2)(b) complained of right shoulder pain as a result. § 87(2)(b) is noted as having sustained “minor swelling.” Police Officer Laborde noted that he sustained “minor lacerations to [his own] finger/hand” as a result of the take-down. Police Officer Laborde also prepared an AIDED report for § 87(2)(b) § 87(2)(b)), stating as follows (Board Review 13): “Subject complains of right shoulder pain as a result of officers attempting to place him under control and in custody when he was actively resisting when stopped for matching the description provided for a confirmed 10-10 shots fired to a [verified] caller. Subject requested EMS at the 23rd precinct stationhouse and refused medical attention when EMS



responded.”

As discussed, the involved and responding officers’ BWCs did not capture take takedown itself (Board Review 20 - 35). The approximately two-minute duration of § 87(2)(b) s handcuffing, however, shows Police Officer Laborde, Sergeant Hom, and about three to four unidentified uniformed officers restraining § 87(2)(b) on the ground. While the closeness of the officers makes it difficult to discern the exact nature of the action on § 87(2)(b) the footage does not show the alleged action on § 87(2)(b) s shoulder, and does not show any force exceeding the standard motions applied to handcuff a subject. The BWC footage does not document any use of profanity against § 87(2)(b)

Per NYPD Patrol Guide (P.G.) Procedure 221-01, force may be used by an officer when it is reasonable to ensure the safety” of another officer or third party, “or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody.” An “application or use of force must be reasonable under the circumstances.” (Board Review 49)

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

**Allegation (E) Abuse of Authority: Sergeant Jonathan Hom frisked § 87(2)(b)**

**Allegation (F): Abuse of Authority: Sergeant Jonathan Hom searched § 87(2)(b)**

Although § 87(2)(b) only stated that he was frisked, the officers conceded that § 87(2)(b) was frisked and searched after his apprehension, and that no weapons or contraband were recovered.

Both Sergeant Hom and Police Officer Laborde stated that § 87(2)(b) physically resisted their efforts to handcuff him once he was taken down, by twisting, turning and refusing to surrender his arms. Sergeant Hom also stated that § 87(2)(b) kept reaching toward his waistband during this struggle, as he had been doing since he was first spotted, which indicated to him that he might have a firearm concealed therein. While Police Officer Laborde made no mention of § 87(2)(b) reaching toward his waistband, he also stated that he feared for his safety while restraining him, since the officers suspected that he could be the shooter with a gun in his possession. Police Officer Elliott

stated that he got to the scene as § 87(2)(b) was already being handcuffed. He was unable to describe § 87(2)(b)'s movements at the time and, besides Sergeant Hom, could not identify the officers in physical contact with him. Sergeant Hom and Police Officer Laborde both acknowledged that § 87(2)(b) was frisked and searched after he was handcuffed, but neither recalled exactly who did so. Beyond the above-recited observations and beliefs, Sergeant Hom and Police Officer Laborde did not articulate any other reason for their fear that § 87(2)(b) was armed and dangerous. Although the frisk and search revealed no firearm, Sergeant Hom stated that he still suspected that § 87(2)(b) was involved in the shooting. Sergeant Hom stated, however, that the investigation was ongoing and § 87(2)(b) was not considered under arrest at the time.

Because the takedown itself was not recorded on any of the BWCs, what transpired immediately thereafter – particularly with regard to § 87(2)(b)'s physical reactions – is unknown. However, during the time period captured, the BWCs all show § 87(2)(b) on the ground face-up, with four to five officers in constant contact with him, and with no discernible physical resistance from § 87(2)(b) who appears to be held steady (Board Review 21-35). From the perspective of Police Officer Pescatore's BWC, it appears that at least one handcuff has been secured around § 87(2)(b)'s right wrist at 2:10. At 02:17 in the same recording, an officer identified as Police Officer Laborde (center frame) extends his right hand under § 87(2)(b)'s jacket. Sergeant Klein's BWC captures the same movements beginning at 2:10. Police Officer Laborde's footage, at 1:17, shows him engaged in the above action — his right arm extended and his hand in brief touch-contact with § 87(2)(b)'s exposed rear waist. At 1:24, Police Officer Laborde extends his left hand to feel either under § 87(2)(b)'s jacket or inside an inner pocket within the jacket. It is unclear if anything is removed from § 87(2)(b)'s person. From 1:25 to 2:00, the uniformed officers also appear to perform actions similar to Police Officer Laborde's, jointly patting both over and under § 87(2)(b)'s jacket. At about 1:57, one of these officers (right frame) appears to feel around § 87(2)(b)'s left jacket pocket. Due to view obstruction and motion disturbance, the limited clarity of these actions do not allow for further review.

All the recordings show § 87(2)(b) being removed from the scene in an RMP after about two minutes of his recorded time on the ground. All the recordings also show that the surrounding individuals are merely bystanders or passerbys who happen to be at the scene.

During a stop, an officer may conduct a pat-down frisk if they reasonably suspect that they are in "danger of physical injury by virtue of the detainee being armed." (People v. De Bour, Board Review 39).

A full-blown search of a subject's person may only be conducted as incident to an "actual arrest" – "not just to probable cause that might have led to an arrest, but did not." People v. Reid, 24 NY3d 615 [2014] (Board Review 52).

Per P.G. Procedure 208-03 (Arrest – General Processing, Board Review 54) and P.G. Procedure 208-05 (Arrest – General Guidelines, Board Review 55), once an arrest has been effected and the prisoner handcuffed, they must be "immediately field frisk[ed] and search[ed] and advised of their rights before questioning."

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (G) Abuse of Authority: Sergeant Jonathan Hom arrested** § 87(2)(b)

It is undisputed that § 87(2)(b) was transported from the scene of his apprehension to 23rd Precinct stationhouse at approximately 4:30 PM, where he was initially arrest-processed. It is also undisputed that he was ultimately released from custody at about 10:15 PM, after his arrest was voided.

Although Sergeant Hom acknowledged that no weapons or contraband were found on § 87(2)(b) and that he was not under arrest while detained at the scene, he still considered § 87(2)(b) to be suspect who had to be interviewed at the stationhouse by a detective. Sergeant Hom also stated that his decision to have § 87(2)(b) removed to the stationhouse was influenced by the fact that a hostile crowd of on-lookers – approximately ten to fifteen individuals – had gathered at the scene, making further investigative action unsafe. When asked if there was probable cause to arrest § 87(2)(b) on any charges at the scene, Sergeant Hom stated that the manner in which § 87(2)(b) had fled – by running through four lanes of traffic on Park Avenue and thus creating a hazardous condition for vehicular traffic – constituted disorderly conduct, an arrestable offense. Sergeant Hom stated that § 87(2)(b) was eventually interviewed at the stationhouse by Detective Dunn, the lead investigator assigned to the case. Sergeant Hom did not recall if he briefed Detective Dunn before the interview and did not participate in the interview himself. At some point after the interview – he had no recollection of how much time had elapsed since § 87(2)(b)'s apprehension — Sergeant Hom and Detective Dunn jointly decided to release § 87(2)(b) as it was determined he was not involved in the shooting.

Police Officer Laborde, the designated arresting officer, stated that § 87(2)(b) was under arrest for disorderly conduct and reckless endangerment when he was brought back to the stationhouse. He stated that § 87(2)(b) had committed reckless endangerment when he ran across Park Avenue,

cutting off active traffic and causing vehicles to stop. Police Officer Laborde also stated that § 87(2)(b) committed disorderly conduct when he was being detained; by yelling and cursing at the officers, he caused a large crowd to gather at the scene; he also attempted to communicate with an individual in the crowd.

When asked if he observed § 87(2)(b) commit any arrestable offenses in his presence, Police Officer Elliott stated that he “didn’t know.”

Detective Dunn stated that on the day of the incident, he was alerted to the shooting as soon as he arrived at the stationhouse to begin his tour. He immediately responded to the scene and learned from responding officers that: there were no injuries; shell casings were being recovered; a video canvas was underway; and that hospital emergency rooms were being surveyed. Detective Dunn was led to believe that the shooting stemmed from a gang-related altercation. While several eyewitnesses were identified, Detective Dunn did not speak with any civilians until the following day. While he stated that suspect descriptions were being relayed via radio regarding “the people involved in the incident,” he was uncertain if a description of the sole shooter was known or transmitted during that period of time.

Soon after arriving on scene, Detective Dunn was assigned as the lead investigator on the shooting, at about which time he came to learn that 23rd Precinct Anti-Crime personnel had brought a possible suspect to the stationhouse for further questioning. Detective Dunn did not recall undertaking a supervisory role at the scene, despite being the lead investigator. He stated that this was not particularly necessary given the “unspoken” understanding that “when something like a shooting occurs” all members of service are “going out and trying to find witnesses, involved subjects, and perpetrators.” After about 30 minutes at the scene, Detective Dunn returned to the stationhouse to interview the individual in custody. He did not recall issuing any directives at the scene before leaving.

At the stationhouse, Detective Dunn learned that the individual in custody had been apprehended by Anti-Crime officers because he matched the description “of one of the individuals involved in the shooting.” Detective Dunn did not recall who provided this information to him and did not recall if any further details were specified regarding the circumstances of § 87(2)(b)’s identification and apprehension. Detective Dunn believed that § 87(2)(b) matched the described subject by his clothing but could not describe exactly how and did not recall if he matched any other aspects of the “involved” suspects whose descriptions were transmitted. Detective Dunn did not recall if § 87(2)(b) was subject to a field search at the scene or if there was any other information connecting him to the shooting.

Upon interviewing § 87(2)(b) for about ten minutes, independently, Detective Dunn was satisfied that he had not been involved in the shooting. After he concluded that § 87(2)(b) was uninvolved, Detective Dunn went on to attend to other tasks associated with the investigation. Detective Dunn had no further interactions with § 87(2)(b) and did not recall being involved in any other decision-making involving his detention, arrest, or release from custody. Detective Dunn believed that § 87(2)(b) was under arrest at the time, but did not recall for what, and knew it was eventually voided. Detective Dunn did not recall any member of the Anti-Crime team seeking his conferral, after the interview, on what to do with § 87(2)(b). While it would be typical for someone to get his input on the matter, he did not recall anyone attempting to do so with respect to § 87(2)(b)’s custodial status – including Sergeant Hom, with whom he was familiar with. Detective Dunn stated that had anyone consulted him, he would have advised that there was no evidence linking § 87(2)(b) to the incident.

Police Officer Laborde’s memo book entries provide a contemporaneous log of what transpired

during § 87(2)(b)'s time in custody, noting: that he was transported at about 4:30 PM; that EMS arrived at 6:00 PM; that § 87(2)(b) was "debriefed by Detective Dunn - negative results," at 9:30 PM; that § 87(2)(b)'s arrest was voided at 10:00 PM; and that he was released at 10:15 PM.

Police Officer Laborde's TRI reflects that the sealed arrest report in question, prepared and voided by Police Officer Laborde, charged § 87(2)(b) with § 87(2)(b), § 87(2)(a) 160.50 (Board Review 12).

Per P.G. Procedure 212-11 (Conducting a Level 3 Stop, Board Review 53), once an officer has reasonable suspicion to detain a person to conduct a criminal investigation, they must question the suspect to the extent necessary to determine whether there is probable cause to make an arrest. The authority to detain the suspect ends when the task tied to the reason for the stop are completed or reasonably should have been completed. P.G. 212-11 further states that once that authority ends, officers may not "transport or otherwise move the suspect from the location where they are stopped [without the prisoner's voluntary] consent or "if there are exigenc[ies] necessitating relocation." An officer must "release the person immediately after completing the investigation if probable cause to arrest does not exist."

Per New York Penal Law §120.25, reckless endangerment in the first degree, is constituted by "a depraved indifference to human life" that creates a "grave risk of death to another person." (Board Review 53) New York courts have interpreted §120.25 as applicable almost exclusively to actions directly resulting in one's death or recklessly creating the "grave risk" thereof (see highlighted statutory history appended at Board Review 54).

Per New York Penal Law §240.20, the offense of disorderly conduct is committed when, "with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof," an individual: engages in fighting or violent behavior; makes unreasonable noise; uses abusive or obscene language; disturbs a lawful assembly or persons or refuses to disperse when lawfully ordered; obstructs vehicular or pedestrian traffic; or "recklessly creates a hazardous or physically offensive condition" by any act which serves no legitimate purpose." "[A]busive statements ...directed exclusively" at police officers, or "coarse language" used to criticize police action, cannot be regarded as elements of disorderly conduct. When a dispute between a civilian and officers attracts otherwise uninvolved onlookers, their mere presence at the scene cannot provide probable cause to arrest for disorderly conduct. People v Baker, 20 NY3d 354, 363 [2013] (Board Review 56).

"Detention for custodial interrogation" can be "indistinguishable from a traditional arrest and must be supported by probable cause. Dunaway v New York, 442 US 200, 202 [1979] (Board Review 57) "While a brief investigatory detention may be justified by special law enforcement interests," a detention that exceeds its initial scope may ripen into a de facto arrest. People v Ryan, 12 NY3d 28 [2009] (Board Review 58)

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(4-b), § 87(2)(g) [Redacted text block]

[Redacted text block]

[Redacted text block]

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### **Civilian and Officer CCRB Histories**

- This is the first complaint to which § 87(2)(b) has been a party (Board Review 60).
- Sergeant Hom has been a member of service for 14 years and has been a subject in 12 CCRB complaints and 23 allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Laborde has been a member of service for seven years and has been a subject in 11 CCRB complaints and 33 allegations, one of which was substantiated:
  - Case 201806306 involved a Substantiated Question allegation for which he was recommended for Formalized Training by the CCRB, with which the NYPD concurred.
- Police Office Elliott has been a member of service for 4 years and has been a subject in six cases and nine allegations, none of which were substantiated. § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- According to the NYC Office of the Comptroller, as of May 4, 2020, no Notice of Claim had been filed in regards to this case (Board Review 60).
- § 87(2)(b)

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Squad No.: 02

Investigator:	/sprakash	Inv. Santosh Prakash	5/4/2020
	Signature	Print Title & Name	Date

Squad Leader:	Alexander Opoku-Agyemang	IM Alexander Opoku-Agyemang	May 5, 2020
	Signature	Print Title & Name	Date